



Neutral Citation Number: [2023] UKFTT 837 (GRC)

Case Reference: EA-2023-0215-GDPR

First-tier Tribunal
General Regulatory Chamber
Section 166 DPA 1998

Decision Given on: 18 October 2023

Before

TRIBUNAL JUDGE BUCKLEY

Between

OLUMIDE SMITH

Applicant

and

THE INFORMATION COMMISSIONER

Respondent

JUDGE BUCKLEY

Sitting in Chambers
on 11 October 2023

DECISION

1. The application under section 166 of the Data Protection Act 1998 is struck out.

REASONS

2. In this decision, 'the Application' is a reference to the application made to the tribunal by Mr Smith under section 166 of the Data Protection Act 1998 (DPA) and 'the Applicant' is a reference to Mr Smith.

Application and response

3. The Commissioner applies for the Application to be struck out under rule 8(3)(c) (no reasonable prospects of success) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.
4. The Commissioner submits that the Applicant simply disagrees with the conclusions reached by the Commissioner on his complaint. Section 166 DPA does not provide a mechanism by which Applicants can challenge the substantive outcome of a complaint. The relief available from the Tribunal on an application under section 166, where it is satisfied that the Commissioner has failed in some procedural respect to comply with the requirements of section 166(1) DPA, is limited solely to that set out in section 166(2).
5. The Applicant was given the opportunity to respond and did so by email dated 14 September 2023. I have taken account of that response in so far as it is relevant.

Discussion and conclusions

The grounds of the application

6. I have read the grounds of the Application in detail. They are extensive. Some of the grounds consist of lists of general principles of law and case law without any indication of how this is said to apply to Mr. Smith's complaint, or how the Commissioner was in breach of those principles.
7. The grounds, as I understand them, appear to fall into two broad categories:
 - 7.1. Complaints about the Commissioner.
 - 7.2. Complaints about the conduct of Cisco Systems Internetworking (Ireland) Limited ('Cisco') or others acting on behalf of Cisco or the data controller, Euromoney.

Complaints about the Commissioner

8. These include:
 - 8.1. Errors of fact and law made by the Commissioner.
 - 8.2. Discrimination by the Commissioner.
 - 8.3. Failure by the Commissioner to apply the rule or law and equal rights.
 - 8.4. Failure by the Commissioner to apply due care and due diligence to due process and procedure used to issue biased partial and wrong decisions.

- 8.5. Failure by the Commissioner to make proper or adequate findings of primary facts upon which proper and reasonable inferences should have been made in order to draw reasonable conclusions and reach a properly reasoned decision.
- 8.6. Failure by the Commissioner to apply the principles of fairness, equal treatment, fair procedures, equality of arms, fair trial, adversarial proceedings, effective access to justice and access to effective remedy [on the ground of racial or ethnic origin.
- 8.7. Failure by the Commissioner to act as an unbiased, impartial, independent and competent national authority of competent jurisdiction.
- 8.8. Bias.

Complaints about the conduct of the data controller, Euromoney, or the conduct of Cisco Systems Internetworking (Ireland) Limited ('Cisco') or others acting on behalf of Cisco

9. This includes:
 - 9.1. Complaints that Cisco/others acting on its behalf have published certain information online, referred to by the Applicant as a 'fraudulent publication' that has affected Applicant's employment prospects, discriminated against him on grounds of race and denied him effective access to justice
 - 9.2. A complaint that Euromoney, as a data controller, has breached its data protection obligations.
 - 9.3. A complaint that the above adversely influenced the outcome of a Court of Appeal case lost by the Applicant.
 - 9.4. A complaint that Euromoney has concealed evidence about whether Cisco authorised the publication and failed to provide other information/evidence requested by the Applicant.
10. In addition the Applicant asserts that he has 'equal right to the exhaustion of the domestic remedy in relation to the said ICO wrong decisions'.
11. Box 6 of the Application asks the Applicant to 'please tell us what outcome you are seeking from your appeal or application'. Mr. Smith wrote: 'I require all the data that the said Respondent Data Controller denied me access'.

Discussion and conclusions

12. On an application to the tribunal under section 166, the tribunal has no power to deal with the merits of the complaint to the Commissioner or its outcome (confirmed in Killock & Veale & ors v Information Commissioner [2021]UKUT 299 (AAC) and R (on the application of Delo) v Information Commissioner and Wise Payments Ltd [2022] EWHC 3046 (Admin)).

13. I am bound by those decisions. I do not consider, in any event, that this interferes with the Applicant's access to justice or deprives him of an effective remedy for data protection breaches. As the Commissioner has made clear, there are other avenues available to the Applicant to pursue his substantive complaint. If the Applicant wishes to seek an order of compliance against the Controller for breach of their data rights, the correct route for them to do so is by way of separate civil proceedings in the County Court or High Court under section 167 of the DPA.
14. The Application has two aspects, neither of which fall within the tribunal's remit under section 166. The complaints about the Commissioner relate to the way in which he reached his conclusions on the substantive complaint, about unfair treatment or bias or amount to assertions that the Commissioner was wrong to conclude as he did. None of these fall within the tribunal's jurisdiction under section 166.
15. There are no complaints in the Application about any failure by the Commissioner to take appropriate procedural steps to deal with the complaint. It is apparent from the information provided by the Commissioner in his response that the Commissioner took steps to investigate the complaint and provided an outcome. The Applicant disagrees with the outcome, but that is not a matter for this tribunal.
16. The other aspect of the Application contains complaints that the data controller has infringed data protection law and other complaints about the data controller or the conduct of third parties. None of these fall within our jurisdiction.
17. I have considered the Applicant's response to the strike out application, but nothing in that response persuades me that the Application contains any matters that the tribunal can deal with under a section 166 application.
18. I have considered whether there is a realistic, as opposed to a fanciful (in the sense of it being entirely without substance), prospect of the Application succeeding at a full hearing. In my view, there are no reasonable prospects of the Application under section 166 succeeding for the reasons set out above.
19. I have considered whether I should exercise my discretion to strike the Application out. Taking into account the overriding objective, it is a waste of the time and resources of the Applicant, the tribunal and the Commissioner for this Application to be considered at a final hearing. In my view it is appropriate to strike the Application out.
20. For the above reasons the Application is struck out under rule 8(3)(c).

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 11 October 2023